IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1539 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATGIRI MAHADEVGIRI GOSWAMI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR YJ PATEL for Applicant(s) : 1,MR PP MAJMUDAR for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner – original accused has prayed for an appropriate writ, direction and/or order quashing and setting

aside the impugned order dated 10th July, 2007 passed by the learned JMFC, Chotila in partly allowing the said application submitted by the prosecution allowing the prosecution / Investigating Officer to conduct the Lie Detector Test and Brain Mapping Test upon the petitioner – original accused. It is also further prayed for an appropriate writ, direction and/or order to quash and set aside the judgment and order dated 30th July, 2007 passed by the learned Additional Sessions Judge, Surendranagar passed in Criminal Revision Application No.38 of 2007 in dismissing the said Criminal Revision Application confirming the order passed by the learned JMFC allowing the application submitted by the Investigating Officer / prosecution to conduct aforesaid two tests i.e. Lie Detector Test as well as Brain Mapping Test upon the petitioner – original accused.

2. A criminal complaint / FIR is filed against the petitioner at Thangadh Police Station being I CR

No.52 of 2006 for the offence under sections 379 and 114 of the Indian Penal Code r.w. sections 4(1) and 21(1) of M.M.R.D. 1957 r.w. sections 5 and 42 of the G.M.M.R. 1966 alleging inter alia that there is a theft and/or illegal mining of mines by the petitioner value of which comes to Rs.17,00,40,000/-. That the petitioner was arrested and was in police custody / remand from 6.7.2007 to 10.7.2007 and thereafter, prosecution asked for further remand of the petitioner and further remand of the petitioner was granted upto 13.7.2007. That during the period the petitioner was on remand, the Investigating Officer / prosecution was of the opinion that for further investigation and to find out the truth, Narco Analysis Test / Brain Mapping Test and Lie Detector Test on the petitioner – original accused is required and therefore, the prosecution submitted an application before the learned JMFC, Chotila for allowing the prosecution to conduct Narco Analysis Test / Brain Mapping Test and Lie Detector Test of the petitioner in connection

with the aforesaid alleged offence and the learned JMFC, Chotila by impugned order dated 10.7.2007 partly allowed the said application allowing the prosecution to conduct Lie Detector Test and Brain Mapping Test upon the petitioner by further observing that at this stage, conducting of all the tests i.e. Narco Analysis Test, etc., is not required. Being aggrieved and dissatisfied with the order passed by the learned JMFC, Chotila dated 10.7.2007 allowing the prosecution to conduct Lie Detector Test and Brain Mapping Test upon the petitioner – original accused, the petitioner – original accused preferred Criminal Revision Application No.38 of 2007 before the learned Sessions Court, Surendranagar which came to be heard by the learned Additional Sessions Judge, Surendranagar who by his judgment and order dated 30.7.2007 dismissed the said Criminal Revision Application confirming the order passed by the learned JMFC, Chotila dated 10.7.2007. Being aggrieved and dissatisfied with both the aforesaid orders, the petitioner – original accused has preferred

present Special Criminal Application under Article 227 of the Constitution of India.

3. Shri P.P.Majmudar, learned advocate appearing on behalf of the petitioner – original accused has submitted that when the petitioner was already on police remand for the period between 6.7.2007 to 13.7.2007 and ample investigation with regard to the aforesaid offence is carried out by the Investigating Agency, the learned trial Court has materially erred in allowing the application submitted by the Investigating Officer to conduct Brain Mapping Test and Lie Detector Test of the petitioner. It is also further submitted by him that in the facts and circumstances of the case, more particularly, when the allegations against the petitioner are that the petitioner is involved into illegal excavating of mines, it is not a fit case where the investigation by aforesaid scientific methods is necessary, more particularly, when the petitioner has not consented upon the said test being conducted upon him and therefore, it is

submitted that there is no need to conduct the aforesaid tests. It is also further submitted by him that conducting of the aforesaid tests upon the petitioner would be violative of the fundamental rights enshrined under Articles 20 and 21 of the Constitution of India. Under the circumstances, it is requested to allow present petition by quashing and setting aside the impugned orders by which the application submitted by the Investigating Agency to conduct Brain Mapping Test and Lie Detector Test has been allowed.

4. Application is opposed by Shri M.R.Mengde, learned APP appearing on behalf of the State. It is submitted by him that in the facts and circumstances of the case, more particularly, when the amount of illegal excavation of mines is to the extent of Rs.17,00,40,000/- and to find out the real truth and the ultimate beneficiary, the aforesaid two scientific tests are required. It is further submitted that conducting of the aforesaid tests is part of the

investigation and for which the consent of the petitioner is not required. It is also further submitted that the controversy raised in the present Special Criminal Application with regard to violation of fundamental rights enshrined under Articles 20 and 21 of the Constitution of India is now not res-integra. It is covered by this Court in the decision of ***Santokben Sharmanbhai Jadeja V/s. State of Gujarat*** reported in **2007 (3) GLH 33**. It is also further submitted by him that this being a petition under Article 227 of the Constitution of India and as there is no jurisdictional error much less an error of law committed by both the Courts below, it is requested not to exercise the powers under Article 227 of the Constitution of India and to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that the allegations against the petitioner are for

illegal excavating the mines to the extent of Rs.17,00,40,000/- and it is also apprehended that some other persons might be involved and to find out the real truth and beneficiary and even after taking the petitioner on police remand still the Investigating Officer was not in a position to find out the real truth and to reach to the real culprit and to find out the truth, the Investigating Officer was of the opinion that conducting of Lie Detector Test and Brain Mapping Test upon the petitioner is required. It is the contention on behalf of the petitioner that in the facts and circumstances of the case, conducting of such scientific tests are not required, more particularly, when the petitioner has not given consent for the aforesaid scientific tests and that conducting of such scientific tests would be in violation of fundamental rights guaranteed under Articles 20 and 21 of the Constitution of India. All the aforesaid aspects have been considered by this Court in case of ***Santokben Sharmanbhai Jadeja*** (supra) and considering the various decisions of

different High Courts i.e. Karnataka High Court, Bombay High Court and Madras High Court, this Court has held that so far as Brain Mapping Test is concerned, protection given by Article 20(3) of the Constitution of India cannot be made applicable as there will not be a statement during such test and the same cannot be said to be incriminatory in nature. Similar view would be applicable to the Lie Detector Test also as there will not be any statement during such test and the same cannot be said to be incriminatory in nature. This Court has also held that conducting of Brain Mapping Test, Lie Detector Test, etc. are scientific tests which are part of investigation and under the provisions of the Criminal Procedure Code the Investigating Officer is empowered to conduct investigation and it will be his subjective satisfaction whether there is need for conducting the aforesaid scientific tests or not and for which the consent of the accused is not required. Under the circumstances and considering the decision of this Court in case of ***Santokben***

Sharmanbhai Jadeja (supra) and for the reasons stated in the said judgment, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed. Even otherwise, this is a petition under Article 227 of the Constitution of India and there is no jurisdictional error much less an error of law committed by any of the Courts below, which requires interference of this Court in exercise of powers under Article 227 of the Constitution of India.

7. For the reasons stated above, petition deserves dismissal and is accordingly dismissed.

[M.R.Shah, J.]

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